

Erwin J. Shustak, Esq. (119152)  
Email: shustak@shufirm.com  
Jonah A. Toleno, Esq. (209600)  
Email: jtoleno@shufirm.com  
Katherine S. DiDonato, Esq. (272704)  
Email: kdidonato@shufirm.com  
SHUSTAK REYNOLDS & PARTNERS, P.C.  
401 West "A" Street, Suite 2250  
San Diego, CA 92101  
Telephone: (619) 696-9500  
Facsimile: (619) 615-5290

Attorneys for Defendant  
Bock Evans Financial Counsel, LTD

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHARLOTTE B. MILLINER, as trustee of the  
Charlotte B. Milliner Trust dated January 30,  
1997, and as owner and holder of the  
CHARLOTTE B. MILLINER SEP IRA;  
JOANNE BREM, as Trustee of the Van Santen-  
Brem Revocable Trust, for themselves and on  
behalf of all others similarly situated,

Plaintiffs,

v.

BOCK EVANS FINANCIAL COUNSEL,  
LTD, a Colorado corporation;

Defendant.

Case No. CV-15-1763 TEH

**PUTATIVE CLASS ACTION**

**NOTICE OF MOTION AND MOTION TO  
WITHDRAW AS COUNSEL FOR  
DEFENDANT BOCK EVANS  
FINANCIAL COUNSEL, LTD**

Judge: Hon. Thelton E. Henderson

Hearing Date: January 25, 2016  
Time: 10:00 a.m.

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on January 25, 2016, at 10:00 a.m., or as soon thereafter  
3 as may be heard in Courtroom 2 of the United States District Court, Northern District of California,  
4 located at 450 Golden Gate Avenue, 17th Floor, San Francisco, California 94102, the law firm  
5 Shustak Reynolds & Partners, P.C. (herein the “Shustak Firm”) will and hereby does respectfully  
6 seek leave of this Court, pursuant to Local Rule 11-5 and in compliance with California *Rules of*  
7 *Professional Conduct* 3-700, as well as the ABA *Model Rules of Professional Conduct* 1.16, to  
8 withdraw as counsel for Defendant Bock Evans Financial Counsel Ltd (“Bock Evans” or  
9 “Defendant”).

10 Counsel states the following grounds for this Notice and Motion:

11 1. Without disclosing attorney-client privileged information, Bock Evans has incurred  
12 and continues to incur, substantial attorney fees and costs, exceeding \$80,000, which it has failed  
13 and refuses to pay, hindering counsel’s ability to take the necessary litigation strategies and steps to  
14 continue to diligently pursue and protect its best interests. Further, irreconcilable differences have  
15 arisen between Bock Evans and the Shustak Firm concerning material advice given to Bock Evans  
16 concerning this litigation.

17 2. The interests of the Court, the Court’s calendar, judicial economy, and the rights and  
18 calendars of all of the litigants would be best-served by withdrawal of the Shustak Firm at this stage  
19 of the litigation. Currently no deadlines have been set regarding class certification or trial, thus,  
20 sufficient time exists for Bock Evans to retain new counsel and for said new counsel to sufficiently  
21 familiarize itself with this matter prior to any significant deadlines in this matter. This is especially  
22 true considering Bock Evans is expected to file a Bankruptcy petition, through other counsel, in the  
23 near future.

24 This motion is based on this Notice of Motion and Motion, the accompanying Memorandum  
25 of Points and Authorities, the Declaration of Erwin J. Shustak, all pleadings and papers on file in  
26 this matter, and upon such other matters as may be presented to, or requested by, the Court at the  
27 time of the hearing on this motion.

1  
2 DATED: December 15, 2015

Submitted by,

3 SHUSTAK REYNOLDS & PARTNERS, P.C.  
4 ERWIN J. SHUSTAK, ESQ.  
5 JONAH A. TOLENO, ESQ.  
6 KATHERINE A. DIDONATO, ESQ.

7 s/ Katherine S. DiDonato  
8 Email: kdidonato@shufirm.com

9 401 West "A" Street, Suite 2250  
10 San Diego, CA 92101  
11 Telephone: (619) 696-9500  
12 Facsimile: (619) 615-5290

13 *Attorneys for Defendant Bock Evans Financial*  
14 *Counsel, LTD*